

Neifeld Docket No: INVE0013-1

Application/Patent No: 09/315,822

USPTO CONFIRMATION NO: 6988

File/Issue Date: 5/21/1999

Inventor/title: Christensen/Virtual Couponing Method and Apparatus for Use with Consumer Kiosk

Examiner/ArtUnit: Janvier/3688

ENTITY STATUS: Large

ASSISTANT COMMISSIONER FOR PATENTS

ALEXANDRIA, VA 22313

37 CFR 1.181(a)(3) PETITION TO INVOKE SUPERVISORY AUTHORITY OF THE  
DIRECTOR

**I. Statement of the Precise Relief Requested**

The patentee requests that the Director enter the attached 37 CFR 1.702 Application for Patent Term Adjustment in place of the 37 CFR 1.701 Application for Patent Term Extension filed May 31, 2010.

**II. Material Facts in Support of the Petition**

1. On August 28, 2002, the applicant filed a request for continued prosecution application.
2. On May 31, 2010, the applicant filed a 37 CFR 1.701 Application for Patent Term Extension and paid the issue fee therefore.
3. The May 31, 2000 37 CFR 1.701 Application for Patent Term Extension relied upon information contained in the USPTO PAIR file history and the PAIR bibliographic data page for this application.
4. The USPTO PAIR file history and the PAIR bibliographic data page information for this application relied upon was inaccurate and misleading.
5. The applicant only discovered the inaccurate and misleading PAIR information

upon review of this application, subsequent to filing the original request for patent term adjustment, and at the time of filing the original request for patent term adjustment believed the assertions in that application to be true.

6. The PAIR bibliographic data page shows the filing date as May 21, 1999, which is not the legal filing date of August 28, 2002. A copy of the PAIR bibliographic data page is attached herewith as Exhibit 3.

7. The CPA application filed August 28, 2002 reset the legal filing date of this application to August 28, 2002. This August 28, 2002 date is after May 29, 2000. This CPA date results in this application having patent term adjustment resulting from the American Inventors Protection Act (AIPA) of 11/29/1999, not the pre AIPA patent term extension act under GATT.

8. The PAIR IFW description entry: "08-28-2002 A... AMENDMENT/Req. Reconsideration-After Non-Final Reject 2" is mis descriptive of the actual document contained therein, which is a request for continued prosecution application. A copy of the PAIR IFW is attached herewith as Exhibit 4. A copy of the continued prosecution application document filed August 28, 2002 is attached herewith as Exhibit 5.

9. The AIPA patent term adjustment is different from the patent term extension available under GATT.

10. On June 28, 2010, the USPTO mailed a decision vacating the January 28, 2010 office action.

11. The June 28, 2010 decision vacating the January 28, 2010 office action had the effect of increasing the days of patent term adjustment due to the applicant by 116 days. See facts 13-16 in the attached 37 CFR 1.702 Application for Patent Term Adjustment. A copy of the June 28, 2010 decision vacating the January 28, 2010 office action is attached herewith as Exhibit 1.

### **III. Reasons Why the Relief Requested Should be Granted**

The applicant acted in reliance on the mis descriptive information contained in the USPTO PAIR file history and PAIR bibliographic data page; and filed a 37 CFR 1.701 Application for Patent Term Extension, instead of a 37 CFR 1.702 Application for Patent Term

Adjustment.

The USPTO PAIR Bibliographic Data page erroneously indicates a May 21, 1999 filing date of the application.

The errors and mis descriptions in the PAIR IFW tab and the Bibliographic Data page relied upon by the applicant are the fault of the USPTO.

The decision in the June 28, 2010 decision states "Since the examiner failed to follow Office policy, as set forth in MPEP 1214.04, the Office action mailed January 8, 2010 is hereby vacated."

The examiner's failure to follow Office policy directly resulted in a delay of 116 days of patent term.

#### **IV. Conclusion**

It would be an injustice to not permit the applicant the opportunity to petition to recover the 116 days of patent term, whereby the 116 days were directly attributed to actions of an examiner who failed to follow Office policy.

#### **V. List of Exhibits**

- Exhibit 1: A copy of the June 28, 2010 decision vacating the January 28, 2010 office action.  
Exhibit 3: A copy of the PAIR bibliographic data page.  
Exhibit 4: A copy of the PAIR IFW.  
Exhibit 5: A copy of the continued prosecution application document filed August 28, 2002.

Date 7/16/2010

BTM

Printed: July 16, 2010 (5:29pm)

Respectfully submitted,  
/BruceMargulies#64,175/  
Bruce T. Margulies  
Registration No: 64,175  
Attorney of Record



Exhibit 1

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

JUN 28 2010

NEIFELD IP LAW, PC  
4813-B EISENHOWER AVENUE  
ALEXANDRIA, VA 22304

In re Application of: :  
Christensen, Scott N. :  
Application No. 09/315,822 : **DECISION ON PETITION**  
Filed: May 21, 1999 : **UNDER 37 CFR 1.181**  
For: VIRTUAL COUPONING METHOD AND :  
APPARATUS FOR USE WITH CONSUMER :  
KIOSK :

This is in response to the June 7, 2010 Request for Reconsideration of the Decision on Petition under 37 CFR 1.181.

The petition is **GRANTED**.

A petition under 37 CFR 1.181 requesting that an Office action mailed January 8, 2010 be vacated was received on May 7, 2010. The petition was dismissed as moot in a decision mailed June 1, 2010 since a Notice of Allowability was mailed May 24, 2010.

Petitioner requests reconsideration of the dismissal. Petitioner argues that the term of the patent depends upon grant or denial of the May 7, 2010 petition and that "the petition is not moot because its grant or denial affects substantive rights; the length of the term of the resulting patent." Petitioner's request for reconsideration is granted.

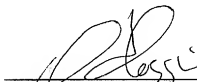
A review of the prosecution history shows that applicant appealed the rejection of claims 1, 4, 9-16 and 24-27 under 35 USC 102(b) as being anticipated by Lemon, the rejection of claims 16-26 under 35 USC 102(e) as being anticipated by Powell, and the rejection of claims 1-16, 19 and 24-27 under 35 USC 103(a) as being unpatentable over Barnett. In the Decision on Appeal mailed July 30, 2009, the Board of Patent Appeals and Interference sustained the 35 USC 102(b) rejection of claims 1, 9-16, 24, 27, the 35 USC 102(e) rejection of claims 16-26, and 35 USC 103(a) rejection of claims 1-3, 5-11, 13-15, 16, 19 and 24-27. The examiner's rejection of claim 4 under 35 USC 102(b) and of claims 4 and 12 under 35 USC 103(a) were not sustained. Pursuant to MPEP 1214.06, applicant filed an amendment after the Board decision cancelling claims 1, 11 and 16-26 and amending claims 2-4, 12-14 and 27. Applicant requested entry of the amendment because "dependent claim 4 (for which the Board has reversed all rejections) has been rewritten in independent form." In response to applicant's amendment, the examiner issued the January 8, 2010 non-final Office action.

In the May 7, 2010 petition, petitioner argues that the January 8, 2010 Office action was mailed contrary to U.S. Patent and Trademark policy in that it was not authorized by the Technology Center (TC) Director. Accordingly, the Office action should be vacated.

According to MPEP 1214.04, the examiner should never regard a reversal of the examiner's rejection as a challenge to make a new search to uncover other and better references. If the examiner has specific knowledge of the existence of a particular reference or references which indicate nonpatentability of any of the appealed claims as to which the examiner is reversed, the examiner should submit the matter to the TC Director for authorization to reopen prosecution under 37 CFR 1.198 for the purpose of entering the new grounds of rejection. The TC Director's approval is placed on the action reopening prosecution.

A review of the January 8, 2010 Office action shows that the examiner rejected all the claims under 35 USC 103(a) using the same references under appeal (i.e., Lemon and Barnett). The examiner also used Official notice in rejecting the claims. Accordingly, the examiner did not have specific knowledge of the existence of a particular reference which would warrant the reopening of prosecution. Furthermore, the lack of a TC Director's signature on the January 8, 2010 Office action indicates that the examiner did not have the TC Director's approval to reopen prosecution. Since the examiner failed to follow Office policy, as set forth in MPEP 1214.04, the Office action mailed January 8, 2010 is hereby vacated.

Inquiries regarding this communication should be directed to Teri P. Luu, Quality Assurance Specialist, at (571) 272-7045

  
\_\_\_\_\_  
Wynn Coggins, Director  
Technology Center 3600  
(571) 272-5350

WC/tl: 06/25/10

7L



United States Patent and Trademark Office

Exhibit 3

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09/315,822

## VIRTUAL COUPONING METHOD AND APPARATUS FOR USE WITH CONSUMER KIOSK



Select New Case	Application Data	Transaction History	Image File Wrapper	Patent Term Adjustments	Continuity Data	Published Documents	Address & Attorney/Agent
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## Bibliographic Data

Application Number:	09/315,822	Customer Number:	-
Filing or 371 (c) Date:	05-21-1999	Status:	Awaiting TC Resp, Issue Fee Payment Verified
Application Type:	Utility	Status Date:	06-08-2010
Examiner Name:	JANVIER, JEAN D	Location:	ELECTRONIC
Group Art Unit:	3688	Location Date:	-
Confirmation Number:	6988	Earliest Publication No:	US 2003-0088461 A1
Attorney Docket Number:	INVE0013-1	Earliest Publication Date:	05-08-2003
Class / Subclass:	705/014	Patent Number:	-
First Named Inventor:	SCOTT N. CHRISTENSEN , OMAHA, NE (US)	Issue Date of Patent:	-

Title of Invention: VIRTUAL COUPONING METHOD AND APPARATUS FOR USE WITH CONSUMER KIOSK

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## VIRTUAL COUPONING METHOD AND APPARATUS FOR KIOSK

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		<u>claim, renumbering, etc.</u>	
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05-21-1999	WFEE	<a href="#">Fee Worksheet (PTO-875)</a>	1

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Exhibit 5

PTO/SB/29 (10-00)  
Approved for filing through 10/31/2002. OMB 0651-0032  
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# **CONTINUED PROSECUTION APPLICATION (CPA) REQUEST TRANSMITTAL**

Submit an original, and a duplicate for fee processing

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*Antonia Lewis*  
*Reg for*

(Only for Continuation or Divisional applications under 37 CFR 1.53(d))

Address to:  Assistant Commissioner for Patents Box CPA Washington, DC 20231	Attorney Docket No. of Prior Application	24122-403
	First Named Inventor	Scott N. CHRISTENSEN
	Examiner Name	J. Janvier
	Group / Art Unit	2162
	Express Mail Label No.	

*CPA fee*  
*7-28-03*

This is a request for a ☒ continuation or ☐ divisional application under 37 CFR 1.53(d).

(continued prosecution application (CPA)) of prior application number 09/315,822

filed on May 21, 1999, entitled VIRTUAL COUPONING METHOD AND APPARATUS FOR USE WITH CONSUMER KIOSK.

## **NOTES**

**FILING QUALIFICATIONS:** The prior application identified above must be a nonprovisional application that is either: (1) complete as defined by 37 CFR 1.51(b), or (2) the national stage of an international application in compliance with 35 U.S.C. 371. Effective May 29, 2000, a CPA may only be filed in a utility or a plant application if the prior nonprovisional application was filed before May 29, 2000. A CPA may be filed in a design application regardless of the filing date of the prior application. See "Request for Continued Examination Practice changes to and Provisional Application Practice," Final Rule, 65 Fed. Reg. 50092 (Aug. 16, 2000); Interim Rule, 65 Fed. Reg. 14665 (Mar. 20, 2000), 1233 Off. Gaz. Pat. Office (Apr. 11, 2000).

**C-I-P NOT PERMITTED:** A continuation-in-part application cannot be filed as a CPA under 37 CFR 1.53(d), but must be filed under 37 CFR 1.53(b).

**EXPRESS ABANDONMENT OF PRIOR APPLICATION:** The filing of this CPA is a request to expressly abandon the prior application as of the filing date of the request for a CPA. 37 CFR 1.53(b) must be used to file a continuation, divisional, or continuation-in-part of an application that is not to be abandoned.

**ACCESS TO PRIOR APPLICATION:** The filing of this CPA will be construed to include a waiver of confidentiality by the applicant under 35 U.S.C. 122 to the extent that any member of the public who is entitled under the provisions of 37 CFR 1.14 to access to, copies of, or information concerning, the prior application may be given similar access to, copies of, or similar information concerning, the other application or applications in the file jacket.

**35 U.S.C. 120 STATEMENT:** In a CPA, no reference to the prior application is needed in the first sentence of the specification and none should be submitted, if a sentence referencing the prior application is submitted, it will not be entered. A request for a CPA is the specific reference required by 35 U.S.C. 120 and to every application assigned the application number identified in such request, 37 CFR 1.78(a).

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- ☐ Enter the unentered amendment previously filed on \_\_\_\_\_ under 37 CFR 1.116 in the prior nonprovisional application
- ☐ A preliminary amendment is enclosed.
- ☐ This application is filed by fewer than all the inventors named in the prior application, 37 CFR 1.53 (c)(4).  
a. ☐ DELETE the following inventor(s) named in the prior nonprovisional application:  
\_\_\_\_\_  
b. ☐ The inventor(s) to be deleted are set forth on a separate sheet attached hereto.
- ☐ A new power of attorney or authorization of agent (PTO/SB/81) is enclosed.
- ☐ Information Disclosure Statement (IDS) is enclosed:  
a. ☐ PTO-1449  
b. ☐ Copies of IDS Citations



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(Page 1 of 2)

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3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$\_\_\_\_\_ for a small entity or \$\_\_\_\_\_ for other than a small entity) disclaiming a period equivalent to the period of abandonment is enclosed herewith (see PTO/SB/63).

4. Statement. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c)(II)(C) and (D))].

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August 28, 2002

Date



Signature

Telephone

Number: (703) 464-4800

Sean L. Ingram

Typed or printed name

Mintz Levin Cohn Ferris Glovsky and Popeo, P.C.

Address

12010 Sunset Hills Road, Suite 900  
Reston, VA 20190

Enclosures: ☒ Fee Payment

☐ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☒ Other: (1) Continued Prosecution Application (CPA) Request Transmittal; (2) Request for Examiner Interview; and (3) copy of petition and payment for five month extension (previously submitted in Ser. No. 09/315,622 on June 5, 2001)

**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(A)]**

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[Page 2 of 2]